



IN REPLY
REFER TO

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MAY 9 1997

**MEMORANDUM FOR COMMANDERS, DEFENSE CONTRACT
MANAGEMENT DISTRICTS**

**SUBJECT: DCMC Memorandum No. 97-49 , Acceptance and Payment of Commercial
Item Contracts (POLICY)**

This is a **POLICY** memorandum. It expires when content is included in DLAD 5000.4, Contract Management (One Book), not to exceed one year. Target Audience: All DCMC personnel.

This policy memorandum addresses and establishes procedures to be used by contract management personnel when administering contracts for the acquisition of commercial items. The Federal Acquisition Streamlining Act of 1994 established contracting procedures for the acquisition of commercial items, and established a preference for commercial items and nondevelopmental items when they are available to meet the needs of the agency. The regulatory coverage in the Federal Acquisition Regulation (FAR) Part 12 addresses commercial contracting in general. FAR Subpart 32.2 addresses commercial financing arrangements and payments of commercial item purchases. The guidance contained in the attachment to this memorandum was developed in coordination with the Defense Finance and Accounting Service (DFAS) and is consistent with the DFAS processes for payment of commercial contracts.

Commercial contracting is an appropriate venue for Early CAS involvement by contract administration personnel. Commercial requirements intended to be administered by DCMC should be reviewed whenever possible to ensure that the resulting contract will contain clear, easily understood procedures for item acceptance and for payment. Payment provisions should be reviewed to ensure that they are compatible with FAR Subpart 32.2, including being customary in the commercial market place for the item being acquired. Since commercial item financing and payment provisions can vary depending on commercial practice, contract management personnel will need to be alert to provisions which may require close monitoring.

Commercial contracts will be designated in the Mechanization of Contract Administration Services (MOCAS) system with the R9 Remark 48 code for easy identification of these instruments. Administrative Contracting Officers (ACOs) should be particularly aware of their commercial item workload, including that in MOCAS Contract Administration Report Part B, inasmuch as it will most likely require more intense interaction with contractors unfamiliar with the provisions contained in FAR



Part 12 and Subpart 32.2. Contract administration personnel should be particularly proactive in performing postaward orientation, either by conference, letter or telephone, for commercial item contracts, particularly when the contract is the first of its type with the given contractor.

The DCMC Headquarters points of contact for this issue are Timothy Frank, (703) 767-3431 or DSN 427-3431, for payment of commercial items, and David Guinasso, (703) 767-2354, DSN 427-2354, for commercial item financing, both of the Business Practices and Contract Payment Team. Payment delay problems or questions regarding the acceptability of invoices which cannot be resolved by the ACO through the normal DFAS Payment Division chain, should be referred to the DCMC DFAS Liaison, Anita Sharninghouse, at (614) 693-4969, or DSN 893-4969.

A handwritten signature in black ink, appearing to read "Robert W. Drewes", with a long horizontal flourish extending to the right.

ROBERT W. DREWES
Major General, USAF
Commander

Attachment

COMMERCIAL CONTRACTING

1. GENERAL INFORMATION.

Changes made in October 1995 to FAR Part 12, Acquisition of Commercial Items, Part 13, Simplified Acquisition Procedures, and Part 32, Contract Financing, implement acquisition policies addressed in the Federal Acquisition Streamlining Act of 1994. The desired result of commercial contracting is to reduce Government oversight in procurement of items readily available to the public, thereby cutting the time and cost of obtaining such items. When originally incorporated into the FAR by Federal Acquisition Circular 90-32, DCMC envisioned receipt of these contracts for administration only when commercial financing was involved. Experience to date with commercial contracting has not shown this to be the case. Recent experience has shown that DCMC may be assigned administration responsibilities whether or not financing provisions are included.

Administration and payment of commercial contracts presents new challenges due to the latitude afforded Contracting Officers in determining, through market research, the commercial practices to be incorporated into the contract and the flexibility allowed in tailoring contract clauses. Notwithstanding the flexibility characteristic of commercial contracting, acceptance procedures of some kind are necessary to satisfy the requirements of FAR 52.212-4, Contract Terms and Conditions - Commercial Items, and to satisfy the provisions of FAR 32.9, Prompt Payment. Specifically, FAR 32.905(f) provides that "All invoices shall be supported by a receiving report or any other Government documentation authorizing payment." and further that the invoices or documentation include "...Date supplies or services were accepted by the designated Government official..." The parties might agree that receipt of an item or service by the Government will constitute acceptance. In such cases, the receiving document should be the source document for entry into the Mechanization of Contract Administration Services (MOCAS) system, in lieu of a Material Inspection and Receiving Report (DD 250). Contract management personnel should be alert to various acceptance procedures that may appear in commercial contracts, and ensure that the Government rights are protected while staying within the terms of the contracts.

Commercial contracts may be subject to Fast Payment Procedure, which is currently limited, in most instances, to purchasing instruments which do not exceed \$25,000, and which conform to other restrictions prescribed in FAR 13.302. In such cases, invoices will be paid on the basis of the contractor's delivery in accordance with FAR 13-302. Note, that if Fast Payment Procedure is used, the relevant portions of FAR 52.212-4 should have been appropriately tailored in accordance with FAR 12.302(a).

Contract management personnel should recognize that the development of administrative process runs the risk of imposing additional requirements on the contractor. Such requirements must not be permitted to exceed or circumvent contractual or regulatory provisions.

2. DFAS COLUMBUS CENTER (DFAS-CO) PROCEDURES: Contract administration personnel need to be aware of procedures developed by the DFAS-CO to process commercial item contracts. Those procedures are summarized below, for information purposes.

a. Normally contracts which have no DD 250 requirement will not have line items input into MOCAS; however, Commercial Contracts are an exception to this rule. All line items for commercial contracts will be input into MOCAS to facilitate production surveillance on these contracts. (Refer to paragraph 3.a.(2)(a) for discussion of acceptance processing.)

b. Input R9 Remark 48 to identify the instrument as a commercial contract.

c. For commercial contracts with financing provisions:

(1) Input a mandatory review code of "9" on the provisions record, if the commercial financing is based on a CLIN level, to ensure proper recoupment of financing payments at time of payment for deliverables.

(2) Track financing payments made in the contract PPULO field in MOCAS for visibility of financing payments made to date.

(3) Ensure that appropriate "payment", "ceiling" and "liquidation" percentages are entered into MOCAS. This percentage can be expressed in the contract, calculated if not expressed, or represent the highest percentage authorized if payments are authorized at the line item level.

d. Prohibit payment of deliverable invoices against commercial contracts without an acceptance document, unless the contract contains "Fast Pay" provisions.

e. Accept invoices against commercial contracts via contractor commercial invoice, Solicitation/Contract/Order for Commercial Items (SF 1449) or DD 250.

3. DCMC PROCESSING:

a. **Upon receipt of a commercial contract, the ACO will:**

(1) Review the contract. Thoroughly review the contract with particular attention to the manner in which acceptance is stated. The PCO is allowed to tailor all segments of FAR 52.212-4 EXCEPT that portion detailing Assignments, Disputes, Payment, Invoicing and Compliance with laws unique to Government contracting or Public Law. As such, the Payment portion of FAR 52.212-4 states, in part: "Payment shall be made for items accepted by the Government that have been

delivered to the delivery destinations set forth in this contract.” As noted, acceptance may take some other form, such as receipt of the item. The crucial point is to ensure that the contract provides for a specific act by a Government official. Documentation of that act will constitute the source document in lieu of the acceptance DD 250 for data input purposes. Discrepancies shall be immediately brought to the PCO’s attention for correction via contract modification. Without some form of an acceptance document, payment cannot be processed.

(2) Conduct postaward orientation. The instructions below pertain to contract management personnel and to the contractor, as appropriate. During the post award orientation, acceptance procedures, financing and payment requirements should be discussed with the contractor. As contractors become familiar with commercial item contracts, a postaward orientation may not be necessary in every instance.

(a) Acceptance/Shipping Document Processing:

i. Utilize the SF 1449 and the applicable page(s) from the contract schedule reflecting the Contract Line Item Number(s) (CLINs) being shipped as a shipping and acceptance document with each shipment. Items not included with an applicable shipment but contained on the attached schedule pages shall be lined through to designate exclusion from the instant shipment. When quantity shipped is less than quantity reflected in the schedule, line through the on order quantity and annotate the quantity shipped.

ii. Ensure that the SF 1449 contains a shipment number in block 33 that is constructed in accordance with Defense Federal Acquisition Regulation (DFARS) Appendix F, Material Inspection and Receiving Report, (i.e., seven positions with extension to 8 positions at time of final shipment of the contract). Shipment numbers shall be sequential throughout the life of the contract. This number should also be utilized as the Contractor’s shipment number on its invoice to ensure timely payment. This is necessary for processing the payment.

iii. Ensure that the shipping/acceptance/receipt document contains all information necessary for DCMC acceptance processing (minimum requirements listed below). If the contractor attaches the appropriate pages of the contract schedule to the SF 1449, all information except the “Date Shipped” should be available. The “Date Shipped” is to be included in the “Ship Number” block of the SF 1449 adjacent to, or directly below, the shipment number. If the contract schedule does not detail the minimum required information, it should be annotated on a separate page and attached to the SF 1449. For information, the minimum requirements for acceptance processing and the corresponding block on the SF 1449 are given below:

REQUIREMENT

SF 1449

PIIN/SPIIN	Block 2, Contract Number
Shipment Number	Block 33, Ship Number
Date Shipped	No corresponding block, utilize block 33
Acceptance Point	No corresponding block; should be in the contract schedule
Shipped TO	Block 15, Deliver To
Item Number	Block 19, Item Number
Quantity Shipped	Block 21, Quantity
National Stock Number (only if specified)	No corresponding block; should be in the contract schedule, if applicable
Unit of Measure	Block 22, Unit
MILSTRIP (only if specified)	No corresponding block; should be in the contract schedule, if applicable
Mark For (only if different from Ship To)	No corresponding block; should be in the contract schedule, if applicable
Inspection and Acceptance	Block 32a and 32b
Date of Acceptance	Block 32c, Date

iv. Standard language in FAR 52.212-4 gives the Government the right to inspect supplies or services, although paragraph (a) of the clause, Inspection/Acceptance, may be tailored in accordance with FAR 12.302. When performing acceptance, where the contract calls for source acceptance, the Quality Assurance Representative will sign the SF 1449 or other appropriate acceptance document, signifying acceptance.

v. Distribute the SF 1449 being utilized as a shipping document in accordance with the contract and as supplemented by DFARS Appendix F. At a minimum, distribution should be as required by the contract, the CAO Terminal and the receiving activity. The CAO Terminal will input the shipment copy data into MOCAS utilizing the same procedures established for input of DD Forms 250. For contracts with destination acceptance, this will trigger Defense Acceptance Reports Tracking System DARTS to automatically request acceptance.

vi. Those contractors that have automated systems in place to prepare shipping and acceptance documents centered around the DD Form 250 format may elect to continue utilizing these systems in lieu of reverting to manual operation. Use of the SF 1449 as the sole acceptable format for shipping documents is not mandatory; ACOs should be aware of the costs involved in modifying automated systems and be flexible in continuing to accept DD Forms 250 for shipping/acceptance documents.

(b) *Invoice Processing*: The contractor may elect to use a commercial invoice or the SF 1449 prepared as the shipping/acceptance document as an invoice. If a commercial invoice is used, attach a copy of the shipping/acceptance SF 1449 for use in payment processing. Should a contractor opt for continued use of an existing automated system designed around the DD Form 250 for shipment processing, this DD Form 250 may also be utilized as an invoice. Whatever form the contractor chooses to utilize as his invoice, the invoice shall be marked "original invoice" and submitted in triplicate to the payment office.

b. **Commercial Item Purchase Financing**. For commercial contracts with commercial financing provisions, the following should be noted:

(1) Types of Financing: There are two types of commercial financing available:

(a) *Commercial Advance Payments*: Commercial advance payments are only made prior to commencement of work and are limited to a maximum of 15% in aggregate payments on the contract (i.e., 15% of the obligated contract amount). A financing payment made after work has started by the contractor is not an advance payment and should be treated as an interim payment. Contracts authorizing advance payments must be monitored closely to ensure that they are input into MOCAS in a timely manner since a payment can not be made until the contract has been processed.

(b) *Interim Payments*: Interim payments are any financing payments made during the life of the contract that is not an advance or delivery payment. These payments may be in the form of installment payments; if installment payments are authorized, the contract will contain clause 52.232-30 (or a Contracting Officer specifically constructed clause) and will cite a fixed number of equal interim financing payments per unit or items not to exceed an aggregate of 70% of the applicable item price. Financing arrangements for other than installment interim payments can be provided for in the contract based upon a wide variety of circumstances, from whatever is predominate in the commercial arena for that business/commodity, to passage of time, to achievement or occurrence of defined events. Currently, there is no FAR specified limitation on the percentage of non-installment interim financing payments that can be made prior to final delivery of the contract.

(2) Security: FAR 32.207(c) designates the ACO as the responsible official for the determination that the security specified in the contract continues to be adequate throughout contract performance. Upon receipt of a commercial contract authorizing financing payments, the ACO will ensure the following:

(a) *Identification of security*. That the security is adequately identified in the contract to allow proper administrative oversight. If the contract fails to adequately state the security assets, the ACC will immediately notify the PCO for additional information, explanation of failure to include, or incorporation of an adequate description via contract modification. A Contract Data Package

Recommendation /Deficiency Report (DD 1716), will also be issued to formally document the contract discrepancy.

(b) *Security review.* That a formal security review plan is established. The security review plan shall be a coordinated effort with team members, as applicable, and DCAA. The plan should include scheduled periodic physical reviews of items on which a lien exists or title is offered. Where the contractor's financial condition is cited as security for the contract financing, the plan should state the manner and frequency in which the financial condition of the contractor will be monitored. As a minimum, the ACO shall require an annual update of the financial data as outlined in DFARS 232.172-2. MOCAS does not currently provide for automation of commercial contract financing payments and, as such, no "Master" will be established in MOCAS until automation can be implemented; therefore, ACOs must manually ensure that suspenses are in place to ensure completion of the periodic reviews. While the contractor is responsible for keeping the Government apprised of its financial condition and any changes in the status of any physical security on which the contract is based, this does not negate the need for scheduled periodic reviews.

(3) Processing of Commercial Financing Requests for Payment.

(a) *Frequency and content of payment requests.* Contractors' request for commercial financing payments shall be submitted no more frequently than monthly per contract. All requested financing payments associated with a particular contract shall be combined into a single request, appropriately itemized and totaled. Each request for payment will be submitted to the ACO for approval on a commercial invoice. As a minimum, each request will contain:

- i. Name and address of the contractor
- ii. Date of the request for financing payment
- iii. Contract number and/or other identifier of the contract or order under which the request is made
- iv. Itemized and totaled statement of the financing payments requested and such other information as is necessary for computation of the payment amount.
- v. Sequential invoice number
- vi. Other information as designated by the contract or ACO. However, ACOs should be careful to avoid imposing requirements beyond what is set forth in the contract or the regulations.

(b) *Processing the request.* Upon receipt of the request for payment by the ACO, a date stamp will be affixed to indicate date of receipt by the ACO. Upon approval of the request for payment, the ACO will:

- i. Access MOCAS to ensure that the contract has been received at DFAS Columbus. If the contract is either in a processed or backlog status, the invoice may be forwarded for payment office processing without further action. If not, the ACO will forward a copy of the contract to DFAS for processing.

ii. Affix a unique invoice identifier to the invoice. It should be noted that the contractor will not be required to number his request for financing payment in this manner. The ACO will add this unique identifier to the invoice upon receipt from the contractor. Requests for advance payments will be numbered sequentially and begin with the unique designator CFA for Commercial Financing Advance request for payment. In contracts where interim payments are authorized, the unique invoice identifier will begin with the unique designator CFI for Commercial Financing Interim request for payment and be numbered sequentially. The fourth position of the unique identifier will be either an "A" (for US) or a "B" (for FMS). Inclusion of this character will highlight to DFAS the processing method to be used for payment. If any portion of a request for financing payment is to be paid utilizing FMS appropriations, the entire request will be assigned the unique identifier number beginning with CF_B. DFAS Columbus will then process the payment with the applicable country code(s) for the FMS appropriation(s) and the country code of "US" for the remaining appropriations. Since commercial advance payments precede commencement of work and interim payments commence after work has started, the ACO should never have an invoice for commercial financing which contains a mixture of advance and interim financing.

iii. When a contract is funded by multiple appropriations (ACRNs) or other special payment instructions are cited in the contract, annotate the approval with appropriate payment instructions, including the accounts to be charged for the payment. While the requirement for ACO annotation of payment instructions exist only when a particular contract is funded by multiple appropriations, it is **STRONGLY** recommended that ACOs routinely provide ACRN data on all commercial financing requests to facilitate payment. DFAS Columbus may be utilizing the Notebook application in MOCAS to document how specific financing arrangements are to be allocated; however, ACO annotation of the specific ACRN(s) to be utilized on each commercial request for payment will aid in proper payment. The contract itself must designate how these payments will be allocated. If such data is missing in the contract, the invoice cannot be paid and corrective action initiated.

iv. Sign, date and annotate his/her telephone number on the request for payment for DFAS Columbus use in communicating with the ACO should problems be encountered in processing the payment.

(c) *Manual processing.* All commercial contract financing requests require manual processing/payment. Until MOCAS is modified to recognize commercial financing, these payments will carry a subtransaction code of "W" on the disbursement history. The ACO should maintain manual records of both financing payments and recoupments made against the contract to ensure MOCAS is properly posted. The on-line disbursement history should be routinely monitored to assure that posting matches the ACO records.